

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CASCADE YARNS, INC.,

Plaintiff/Counterclaim
Defendant,

V.

KNITTING FEVER, INC., et al.,

Defendants/Counterclaim
Plaintiffs/Third-Party
Plaintiffs,

V.

ROBERT DUNBABIN, SR., et al.,

Third-Party Defendants.

CASCADE YARNS, INC.,

Plaintiff,

V.

EMMEPIFFE S.R.L., a foreign limited liability corporation,

Defendant.

This matter is before the Court for consideration of defendants' motion to exclude the expert reports and testimony of plaintiff's expert Kenneth D. Langley. Dkt. # 738. Defendants move to exclude his testimony as unreliable, pursuant to *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). Plaintiff has opposed the motion. The Court deems it unnecessary to hear oral argument, and for the reasons set forth shall grant the motion.

ORDER - 1

1 FACTUAL BACKGROUND
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3 The background of this dispute is well known to the parties, and only the points relevant to this
4 motion shall be summarized here. Plaintiff Cascade Yarns, Inc., (“Cascade”) sells luxury yarns, some
5 of them a blend of wool with other natural fibers, including kid mohair, silk, and cashmere. The yarns,
6 bearing the Cascade brand label, are sold through retail yarn shops and boutiques around the United
7 States. Defendant Knitting Fever, Inc., (“KFI”) is one of Cascade’s chief competitors. KFI is a
distributor of a number of brands of luxury yarn, including the popular Debbie Bliss line.

8 Cascade alleges in the Fourth Amended Complaint that sometime between July 2000 and June
9 2001, Mr. Sion Elalouf, the controlling shareholder and chief executive of KFI, “discovered two
10 versions of a yarn called Cashmerino—one of which contained cashmere and the one which did not
11 contain any cashmere.” Fourth Amended Complaint (“FAC”), Dkt. # 322, ¶ 28. Mr. Elalouf, with all
12 his experience in the yarn trade, was “unable to distinguish between the cashmere and non-cashmere
13 versions of the yarn.” *Id.*, ¶ 29. Indeed, apart from “expert fiber analysis—something to which the
14 majority of KFI’s and Cascade’s customers do not have access—it is virtually impossible to confirm the
15 presence of cashmere is [sic] a spun yarn.” *Id.* According to the complaint, following this discovery of
16 the two versions of Cashmerino, Mr. Elalouf entered into an agreement with defendant Designer Yarns,
17 LTD., a British company, to “substitute the 0% cashmere version of the product for the Cashmerino spun
18 of 12% cashmere.” *Id.*, ¶ 31. The “0% cashmere” version was then marketed in a new line of Debbie
19 Bliss yarns to be launched by Designer Yarns and distributed in the United States by KFI. *Id.*, ¶¶ 33-34.
20 The “non-cashmere” Cashmerino, with a label indicating the fiber content of 55% merino wool, 33%
21 microfiber, and 12% cashmere, was introduced to the market at the U.S. trade show in June 2001. *Id.*,
22 ¶¶ 35-39.

23 In 2006, Cascade “became aware of the extent of KFI’s enormous success with its Cashmerino
24 line of yarn products.” *Id.*, ¶ 40. Apparently suspicious of the accuracy of the label on the yarn,
25 Cascade sent a sample of a KFI Cashmerino brand yarn to the Cashmere and Camel Hair Manufacturers
26 Institute (“CCMI”) for fiber content analysis. *Id.* CCMI sent the sample to K.D. Langley Fiber
27 Services (“Langley”) to conduct the testing. On May 26, 2006, Langley “issued a report and concluded

1 that ‘[n]o cashmere fibers were observed.’” *Id.*, ¶ 41. The test results “showing that KFI’s Cashmerino
 2 yarn products did not contain any cashmere became known” at the National Needlework Association
 3 trade show that took place June 10 through June 12, 2006. *Id.*, ¶ 43. Sion Elalouf, KFI’s chief
 4 executive, contacted Cascade’s legal counsel concerning the test results soon after their industry release.
 5 A series of communications followed between KFI, the other defendants, and Cascade representatives,
 6 contesting the May 26 test report. *Id.*, ¶¶ 44-47. Specifically, “according to Mr. Elalouf, the type of
 7 cashmere that KFI uses will not show up in fiber tests.” *Id.*, ¶ 44. Counsel for KFI asserted that “fiber
 8 tests for cashmere content in spun yarn are inherently unreliable,” and included with his response copies
 9 of test reports “purporting to show that Debbie Bliss Cashmerino yarns contained cashmere.” *Id.*, ¶ 47.

10 In September 2006, “amidst the growing controversy in the hand knitting yarn community,”
 11 Debbie Bliss sent a letter to retailers who sold Cashmerino throughout the United States, “represent[ing]
 12 that the Debbie Bliss branded yarns contain cashmere.” *Id.*, ¶ 53.¹ In the meantime, a Pennsylvania
 13 yarn retailer, The Knit With, sent samples of Debbie Bliss Cashmerino, Baby Cashmerino, and
 14 Cashmerino Aran to Langley for further testing. All three yarns are labeled as containing 12%
 15 cashmere. Langley reported on July 18, 2006, that “[n]o cashmere fibers were observed in any of the
 16 samples.” *Id.*, ¶¶ 61-63; *Id.*, Exhibit A. A separate July 25, 2006 quantitative analysis report by
 17 Langley described the content of the Cashmerino Aran as 57.2% wool and 43.8% acrylic, with “no
 18 cashmere fibers [] observed in the sample.” *Id.*, Exhibit B. The Knit With yarn shop also sent the same
 19 three yarn samples to a different testing laboratory, Specialized Technological Resources, Inc. This
 20 laboratory examined the fibers by microscope and reported as to each that “there was no cashmere.” *Id.*,
 21 ¶¶ 65-67; *Id.*, Exhibit C.

22 In April and May 2010, shortly before initiating this lawsuit, Cascade sent additional yarn
 23 samples to Langley for fiber analysis. The samples included both Cashmerino yarns and other luxury
 24 yarns distributed by KFI, such as Louisa Harding Kashmir Aran, Noro Silk Garden, and others.

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¹A copy of this letter has been filed in conjunction with a separate motion in this matter. Ms.
 27 Bliss states in the letter that “stringent state of the art tests, including DNA,” had confirmed the presence
 28 of cashmere in the Cashmerino yarn. Declaration of Joshua Slavitt, Dkt. # 765, Exhibit 4.

1 Langley found no cashmere at all in the Debbie Bliss Cashmerino Astrakan and Louisa Harding
 2 Kashmir Aran yarns, despite labels stating that each contained 10% cashmere. *Id.*, ¶¶ 70-71. Other
 3 yarns, according to Langley's analysis, contained cashmere, but in substantially lesser amounts than
 4 listed on KFI's labels. *Id.*, ¶¶ 72, 74-76, 78, 79-81. In subsequent tests, Langley found no cashmere in
 5 samples of Louisa Harding Kashmir Baby yarn, Debbie Bliss Cashmerino Chunky yarn, Debbie Bliss
 6 Baby Cashmerino, and another sample of Debbie Bliss Cashmerino Astrakan. *Id.*, ¶¶ 82-85.
 7 Additional 2010 fiber test results from Langley are detailed in the FAC at ¶¶ 86-95. These test results
 8 from the K.D. Langley lab led to the filing of the original and successive amended complaints, all
 9 alleging that KFI yarn is mislabeled as to fiber content, and that such mislabeling constitutes a fraud and
 10 a violation of the Lanham Act, 15 U.S.C. § 1125(a), as well as the Washington Consumer Protection
 11 Act, RCW 19.86.

12 In 2011, Cascade began sending samples of milk fiber yarns, such as Ella Rae Milky Soft,
 13 Knitting Fever Baby Milk, Ella Rae Latte, and others distributed by KFI, to Langley for fiber analysis.
 14 Langley found no milk protein in any of the yarns. *Id.*, ¶¶ 97, 99-101, 104. These tests on milk fiber
 15 yarn led to the filing of Cascade's Third and Fourth Amended Complaints, which incorporated
 16 allegations of mislabeling with respect to these yarns.

17 After extensive motion practice (the docket comprises at this moment 862 entries), this case is
 18 approaching the trial date. The parties have filed five separate motions for summary judgment, as well
 19 as numerous motions to exclude each others' experts. Only the motion to exclude the expert report and
 20 testimony of Kenneth Langley is ripe for consideration at this time. Because of the crucial role of Mr.
 21 Langley and K.D. Langley Fiber Services in the initiation and development of this case, the Court
 22 deems it necessary to rule on this motion before turning to the various summary judgment motions.

23 **DISCUSSION**

24 **I. Legal Standard**

25 Defendants bring this motion pursuant to Federal Rule of Evidence 702. This rule states:

26 If scientific, technical, or other specialized knowledge will assist the trier of fact to understand
 27 the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge,

1 skill, experience, training, or education, may testify thereto in the form of an opinion or
 2 otherwise, if (1) the testimony is based on sufficient facts or data, (2) the testimony is the
 3 product of reliable principles and methods, and (3) the witness has applied the principles and
 4 methods reliably to the facts of the case.

5 FRE 702. Under this rule, expert testimony is admissible if it is both relevant and reliable. In *Daubert*,
 6 the Supreme Court charged trial courts with the task of acting as “gatekeepers” by deciding whether to
 7 admit or exclude expert testimony under FRE 702. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*,
 8 509 U.S. at 589 (“*Daubert I*”). The Court has an obligation to “ensure that any and all scientific
 9 testimony . . . is not only relevant, but reliable.” *Id.*

10 FRE 702 permits a flexible, fact-specific inquiry that embodies the twin concerns of reliability
 11 and helpfulness. *See Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 150-51 (1999). The test for
 12 helpfulness is essentially a relevancy inquiry. *See Daubert I*, 509 U.S. at 591 (“Expert testimony which
 13 does not relate to any issue in the case is not relevant and, ergo, nonhelpful” (internal quotation marks
 14 omitted)). As for reliability,

15 *Daubert* provides a non-exclusive list of factors for determining whether expert testimony
 16 is sufficiently reliable to be admitted into evidence, including: (1) whether the scientific
 17 theory or technique can be (and has been) tested, (2) whether the theory or technique has
 18 been subjected to peer review and publication, (3) whether there is a known or potential
 19 error rate, and (4) whether the theory or technique is generally accepted in the relevant
 20 scientific community.

21 *Mukhtar v. California State Univ., Hayward*, 299 F. 3d 1053, 1064 (9th Cir. 2002). This list of factors
 22 is intended to be “helpful, not definitive.” *Kumho Tire*, 526 U.S. at 151.

23 Although the Court’s focus must be on principles and methodology and not on conclusions,
 24 “nothing in either *Daubert* or the Federal Rules of Evidence requires a district court to admit opinion
 25 evidence which is connected to existing data only by the *ipse dixit* of the expert.” *General Electric Co.*
 26 *v. Joiner*, 522 U.S. 136, 146 (1997). “Conclusions and methodology are not entirely distinct from one
 27 another.” *Id.* The party proffering the evidence “must explain the expert’s methodology and
 28 demonstrate in some objectively verifiable way that the expert has both chosen a reliable scientific
 29 method and followed it faithfully.” *Daubert Merrill Dow Pharmaceuticals, Inc.*, 43 F. 3d 1311, 1319 n.
 30 11 (9th Cir. 1995) (“*Daubert II*”). To that end, the judge may inquire as to how often an expert’s

1 experience-based methodology has produced erroneous results. *Kumho Tire*, 526 U.S. at 151.

2 II. Analysis

3 Plaintiff's expert on fiber analysis, Kenneth D. Langley, is the owner and operator of K.D.
4 Langley Fiber Services. He is Chancellor Professor Emeritus of Bioengineering at the University of
5 Massachusetts Dartmouth, with an undergraduate Bachelor of Science degree conferred by that
6 institution in 1964, and a Master of Science degree conferred by the Institute of Textile Technology in
7 Charlottesville, Virginia in 1968. Declaration of Robert Guite, Dkt. # 779, Exhibit A. He began as an
8 assistant professor at the University of Massachusetts Dartmouth in 1968 and has taught courses since
9 that date, including courses in design and analysis of experiments, statistical methods, fiber technology,
10 microscopy, and process optimization. *Id.* He has numerous peer-reviewed conference publications, as
11 well as other publications. *Id.* He has attended and chaired numerous conferences and discussions in
12 the textile industry, and has served on many committees, including the Cashmere and Camel Hair
13 Manufacturers Institute ("CCMI") Technical Advisory Committee in 1998. *Id.*

14 Despite this extensive resume and list of publications, defendants have moved to exclude
15 Professor Langley's expert report and testimony as unreliable, both with respect to cashmere and other
16 animal fibers, and as to milk protein fibers. The Court will address the two fiber types separately.

17 A. Cashmere

18 Pursuant to the Wool Products Labeling Act,² a wool product may not be labeled as "cashmere"
19 unless it is the "fine (dehaired) undercoat fibers produced by a cashmere goat (*capra hircus laniger*)" and
20 "the average diameter of the fiber of such wool products" does not exceed 19 microns. 15 U.S.C. §
21 68a(6)(A), (B). In addition, the wool product may not contain more than 3 percent by weight of
22 cashmere fibers with average diameters exceeding 30 microns. 15 U.S.C. § 68a(6)(c). In other words,
23 cashmere is defined both by the species of the animal and the average diameter of the individual fibers.

24 The American Association of Textile Chemists and Colorists ("AATCC") has developed
25 standardized test protocols for qualitative and quantitative analysis of textile fibers, designated Test

27 ²Reference is made to the Wool Products labeling Act for the purpose of definition only.

1 Method 20-2011 and 20A-2011 respectively. The qualitative test is capable of distinguishing various
2 types of animal-origin fibers, including alpaca, camel, cashmere, llama, mohair, wool, and yak, from one
3 another. Declaration of Joshua Slavitt, Dkt. # 739, Exhibit 3. The test protocol requires equipment such
4 as a compound microscope, slides, dissection needles, cross-sectioning device such as microtome or
5 razor blade, melting point apparatus, micro-FTIR instrument for infrared spectroscopy, differential
6 scanning calorimeter, and various reagents. *Id.* The test includes detailed observation of individual
7 fibers under a microscope both in transverse section and elongated, including observation of the scales
8 on animal fibers. *Id.*

9 The qualitative analysis procedure can determine relative amounts of natural fibers such as
10 cotton, hair, hemp, linen, ramie, silk and wool in a blended fiber, but the AATCC protocol does not state
11 that it can distinguish cashmere from other wool (such as sheep's wool). *Id.*, Exhibit 2. The required
12 equipment includes an analytical balance capable of weighing down to 0.1 milligram, an oven
13 desiccator, filters, flasks and weighing crucibles, microscope, fiber cutter, and various reagents. *Id.*

14 Professor Langley operates K.D. Langley Fiber Services from his private, self-contained
15 laboratory adjacent to his home. Rule 26 Expert Report of Kenneth D., Langley, Dkt. # 739, Exhibit 7.
16 He has conducted hundreds of tests in his laboratory, which has been "identified as an approved
17 laboratory for purposes of the analysis of specialty animal fibers by CCMI. *Id.*, ¶ 16. He follows the
18 AATCC 20 and 20A protocols for quantitative and qualitative analysis, using the latest iteration in each
19 instance. *Id.*, ¶ 21-22. He is not familiar with the International Organization for Standardization
20 ("ISO") or its standard for certification of laboratories, ISO 17025, and therefore has not been certified
21 by that organization. Deposition of Kenneth Langley, Dkt. # 739, Exhibit , p. 129.

22 Defendants have moved to exclude Professor Langley's report and testimony in the first instance
23 because objectively verifiable tests indicate that his test results are not reliable. Professor Langely
24 participated in "round trials" conducted by CCMI in the years 2005, 2007, 2008, 2009-10, and 2011.
25 These are tests in which samples of blended animal hair fibers are tested by various laboratories. The
26 actual blend is known to CCMI so there is an objective standard. The results, according to the 2007
27 president of CCMI, enable CCMI and the analytical communities "to better understand the current

1 issues of testing, analysis and fiber identification, emphasizing the importance of accuracy and
2 reproducibility of analytical results among laboratories.” Declaration of Joshua Slavitt, Dkt. # 739,
3 Exhibit 10. Defendants have produced a chart of Professor Langley’s results from all five rounds, as
4 well as the results reported by all participants in the 2007 round. These results do not simply cast doubt
5 over the reliability of the fiber analysis tests; they demonstrate a disturbing lack of accuracy and totally
6 refute the reliability of the testing procedure.

7 The results, in chart form, were as follows (amounts of cashmere are highlighted for ease of
8 comparison):

9 2005 Round Trial:

10 Sample 1: **80%** cashmere, 20 % wool. Langley found **84%** cashmere, 16% wool.

11 Sample 2: **50%** cashmere, 50% wool. Langley found 68% wool, **32%** cashmere.

12 Sample 3: **100%** cashmere, which was correctly identified.

13 Sample 4: 100% yak. Langley found 60% yak, 35% wool, 3% camel, and 2% cashmere.

14 Sample 5: 100% yak, which was correctly identified.

15 Sample 6: 90% wool, **10%** cashmere. Langley found 100% wool, **no** cashmere.

16 2007 Round Trial

17 Sample 1: **80%** cashmere, 20% yak. Langley found 97.8% yak, **2.2%** cashmere.

18 Sample 2: **50%** each cashmere and dyed yak. Langley found 95.2% yak and **4.8%** cashmere.

19 Sample 3: **70%** cashmere, 30% fine wool. Langley found 94.2% wool, **5.8%** cashmere.

20 Sample 4: **90%** cashmere, 10% optima wool. Langley found **94.9%** cashmere, 5.1% wool.

21 Sample 5: **80%** cashmere, 20% Mohair (angora). Langley found 100% “Cashgora.”

22 2008 Round Trial

23 Sample 1: 100% cashmere, which was correctly identified.

24 Sample 2: 100% yak, which was correctly identified.

25 Sample 3: 85% wool, **15%** cashmere. Langley found 90.1% wool, **9.9%** cashmere.

26 Sample 4: **50%** cashmere, 50% Chinese wool. Langley found **73%** cashmere, 27% wool.

27 Sample 5: **50%** cashmere, 50% Chinese wool. Langley found **64.3%** cashmere, 35.7% wool.

1 2009-10 Round Trial

2 Sample 1: 73% wool, **27%** cashmere. Langley found 93.8% wool, **6.2%** cashmere.

3 Sample 2: **93%** cashmere, 7% wool. Langley found **74.7%** cashmere, 25.3% wool.

4 Sample 3: 100% cashmere, which was correctly identified.

5 Sample 4: 100% yak, which was correctly identified.

6 Sample 5: 65% wool, **35%** cashmere. Langley found 100% wool and **no** cashmere.

7 2011 Round Trial

8 Sample 1: 79% wool, **21%** cashmere. Langley found 92.9% wool, **7.1%** cashmere.

9 Sample 2: 100% yak, which was correctly determined.

10 Sample 3: **60%** cashmere, 23% wool, 17% angora. Langley found 43.1% wool, **45.1%** cashmere, and 11.8% angora.

11 Sample 4: 100 % cashmere, which was correctly determined.

12 Sample 5: **75%** cashmere, 25% yak. Langley found **100 %** cashmere.

13 Declaration of Joshua Slavitt, Dkt. # 739, Exhibit 9. Thus, while the 100% cashmere and 100% yak fibers were correctly identified, Professor Langley's test results were off by a wide margin for every single blended yarn or fiber. Most often, the amount of cashmere was significantly under-reported. See Samples 1, 2, and 3 in the 2007 round trials, Sample 1 in the 2009-10 round trial, and Sample 1 in the 2011 trial. In two instances, the Langley tests found no cashmere at all, where it was present at levels from 10% to 35%. See Sample 6 in the 2005 round trial, and Sample 5 in the 2009-10 round trial. The fact that on occasion the cashmere content found by testing was greater than the actual amount does not serve in any way to validate the testing procedure; it was still objectively wrong. Thus Professor Langley's methods have been objectively tested and have been found lacking in reliability under *Daubert*.

24 Nor do the results achieved by other laboratories in the round test increase confidence in the reliability of the tests in general. Instead, they have the opposite effect. Defendants have offered a chart showing the test results from forty testing laboratories in the 2007 round trials. Declaration of Joshua Slavitt, Dkt. # 739, Exhibit 10. Of the 200 tests conducted (5 samples x 40 laboratories), only

1 29 tests were accurate within three percentage points of the actual value for the fibers (wool, cashmere,
2 yak, and angora). Looking specifically at Sample 3, which was 70% cashmere and 30% wool, only
3 twelve laboratories of the forty reported values within three percentage points of the actual fiber content.
4 Of the remaining tests, ten actually reversed the values, finding less cashmere than wool in the sample,
5 and one test found no cashmere at all. *Id.* This was the sample in which Langley found only 4.8%
6 cashmere, but two other labs also found low cashmere content of 12.5% and 13.11%, far less than the
7 actual 70% present in the sample. These figures suggest that accuracy and reliability of the test results
8 are not an isolated problem with K.D. Langley Fiber Services; it appears to be industry-wide.

9 In opposing defendants' motion, Cascade argues in the first instance that Professor Langley's
10 test results should be viewed as accurate because they comport with test results from other laboratories.
11 Cascade must perform some statistical sleight of hand to support this assertion. Referring specifically to
12 eleven different tests performed by Langley on Debbie Bliss Cashmerino Aran, Cascade argues that the
13 eleven different values, which range from 0% cashmere in two samples up to 7% in one sample, should
14 be averaged to reach a value of 3.45%. Cascade's Opposition, Dkt. # 778, p. 3. According to Cascade,
15 this average value is "almost perfectly congruent" with the average value of 3.5% cashmere found in
16 samples of this yarn by a different laboratory. *Id.* This reasoning is scientifically unsound; nowhere
17 has Cascade provided any expert testimony to the effect that averaging a series of variable (and possibly
18 inaccurate) values produces a single reliable value. Moreover, as demonstrated above, the results
19 achieved by other testing laboratories in the round tests are as variable in accuracy as Langley's, so
20 comparing "averages" does nothing to bolster the reliability of either laboratory's results.

21 Next, Cascade contends that the round trials should not be used as a gauge of the reliability of
22 the Langley test results because they are so difficult. Cascade accuses defendants of "withholding from
23 the Court the fact that the samples used in those trials are 'designed to be deliberately [more] difficult'
24 than standard commercial samples in order to 'set a higher standard to the CCMI trials.'" Cascade's
25 Opposition, Dkt. # 778, p. 10. Cascade cites for this proposition to the deposition of Liqin Zhang, who
26 is not identified by Cascade but who is described by defendants as a representative of a different testing
27 laboratory, not a representative of CCMI. Liqin Zhang stated that "from my experience of being

1 participating [sic] in the CCMI trial, I noticed that their samples are more difficult from the commercial
 2 samples.” Declaration of Robert Guite, Dkt. # 779, Exhibit G, p. 26. When asked why the round trials
 3 would be more difficult, he responded, “Obviously they’re trying to set a higher standard to the CCMI
 4 trials.” *Id.* This statement is pure speculation on the part of this witness, who does not represent CCMI
 5 or speak for their policies. As noted above, the purpose of the CCMI round trials, as stated by the 2007
 6 president Karl Spilhaus, is to “understand the current issues of testing, analysis and fiber identification,”
 7 with an emphasis on accuracy and reproducibility. Declaration of Joshua Slavitt, Dkt. # 739, Exhibit 10.
 8 So it is erroneous for Cascade to characterize as “fact” Liqin Zhang’s speculative statements about the
 9 difficulty of the round trials. The Court finds no basis for disregarding the round trials as a measure of
 10 reliability (or lack thereof) of the Langley laboratory’s fiber test results.

11 Finally, Cascade insists that Professor Langley’s results must be accepted because he is well-
 12 respected as an expert and he followed the AATCC testing protocols. Cascade’s Opposition, Dkt. #
 13 778, pp. 9 - 14. This line of reasoning approaches the *ipse dixit* argument so thoroughly rejected by the
 14 Supreme Court. *Joiner*, 522 U.S. at 146. The Court has inquired “as to how often [the] expert’s
 15 experience-based methodology has produced erroneous results” and has found the error rate far too high
 16 to be accepted as reliable. *Kumho Tire*, 526 U.S. at 151. It must therefore be excluded as inadmissible.

17 B. Milk Fiber Yarn

18 Defendants ask to exclude Professor Langley’s report and testimony on milk fiber yarns, on the
 19 basis that he is not qualified as an expert in this area. His credentials describe him as an expert in the
 20 area of fine animal hair fibers, while milk protein fiber is a semi-synthetic product. With respect to milk
 21 protein (casein) fibers, he stated in his deposition testimony, “I’ve done enough research on casein that I
 22 have some knowledge of it.” Deposition of Kenneth Langley, Dkt. # 779, Exhibit B, p. 57. He also
 23 noted that milk protein fiber “seems to have disappeared” from the United States textile industry in the
 24 1960’s (which would be prior to his university studies in the textiles field). *Id.*, p. 74. For this reason,
 25 the reference or “known” samples of milk fiber he had available for visual comparison to his test
 26 samples were from the university archives, and were over forty years old. *Id.*, pp. 78-79.

27 For the birefringence test, Professor Langley testified to using a fiber named Vicara as the

1 reference sample. He found that the birefringence colors from the reference sample and the test
 2 samples of defendants' milk fiber yarns were "totally opposite." *Id.*, pp. 80-81. Defendants have
 3 produced evidence that the Vicara reference sample was zein or corn protein, not milk protein, so that
 4 the birefringence test result was inapplicable. Declaration of Joshua Slavitt, Dkt. # 739, Exhibit 13.
 5 Nowhere has Cascade addressed this assertion or attempted to rebut it; Cascade simply reports the
 6 Professor's observation and asks the Court to accept it without question. See, Cascade's Opposition,
 7 Dkt. # 778, p. 11. In light of defendants' evidence and argument regarding the reference samples, the
 8 Court will not do so.

9 Even more problematic is defendants' contention that the testing protocol used by Professor
 10 Langley (bleaching before analysis) stripped away the milk protein from the fiber before he tested it.
 11 Nowhere has Cascade attempted to rebut this assertion or even address it. On the other hand, defendants
 12 have produced evidence in the form of an expert deposition that "the validated and useful technique for
 13 determining whether or not Casein proteins are present" is micro FTIR. Deposition of Maureen
 14 Reitman, Dkt. # 850, Exhibit 1, p. 128. She noted that Professor Langley did not use that technique,
 15 and that the techniques he did apply "are not validated for distinguishing Casein presence in all forms
 16 and in fibers [such as] the ones that we are looking at here." *Id.* The Court shall accordingly find that
 17 Professor Langley is not qualified as an expert on the presence of milk fiber protein in yarn.

18 CONCLUSION

19 The Court, exercising its obligation as gatekeeper in this matter, finds that Professor Langley's
 20 reports and testimony on cashmere and other animal fibers are based on test techniques which have been
 21 demonstrated to be highly unreliable, and are therefore inadmissible. Further, he is not qualified to
 22 testify as an expert on milk fiber yarn. Defendants' motion to exclude the expert reports and testimony
 23 of Kenneth D. Langley is accordingly GRANTED pursuant to FRE 702 and *Daubert I*.

24 Dated this 18th day of October 2012.

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28 RICARDO S. MARTINEZ
 UNITED STATES DISTRICT JUDGE

ORDER - 12